



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2003

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2003-6302

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 187217.

The City of Garland (the "City") received a request for all records regarding a named individual from January 1, 1999 through June 30, 2003. You assert the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we note that the requestor seeks information through June 30, 2003; yet, the City received the request for information on June 26, 2003. The Act does not require a governmental body to disclose information that does not exist at the time a request is received or to create new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Next, section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses the doctrine of common-law privacy, which protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest

in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683. Based on our review of the submitted information, we believe it contains highly intimate or embarrassing facts, in which the public has no legitimate interest. Accordingly, we conclude the City must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Further, we note that when a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Here, by requesting unspecified information about a named individual, we believe the requestor has asked the City to compile criminal history information, thereby implicating the individual's right to privacy to the extent she is identified as a suspect, arrestee, or defendant. *See id.* Thus, to the extent it exists, the City must withhold such information under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Additionally, we note that the submitted information contains social security numbers, most of which you have highlighted, that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622* (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 of the Government Code and the referenced federal provision. However, we caution the City that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the City pursuant to any provision of law enacted on or after October 1, 1990.

Last, the submitted documents contain information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130. Here, the information at issue contains a license plate number, which you have highlighted, that the City must withhold under section 552.130 of the Government Code.

In summary, the City must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. To the extent it exists, the City must withhold information that identifies the subject of the request as a suspect, arrestee, or defendant under section 552.101 of the Government Code and *Reporters Committee*. If applicable, the City must withhold the social security numbers in accordance with section 552.101 and federal law. The City must withhold the motor vehicle information you have marked under section 552.130 of the Government Code. The City must release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Christen Sorrell". The signature is fluid and cursive, with the first name "Christen" written in a larger, more prominent script than the last name "Sorrell".

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 187217

Enc: Submitted documents

c: Ms. Gwen Morrison  
2209 Lee Street  
Garland, Texas 75041  
(w/o enclosures)